Reichhold Chemicals, Inc.[1] ***and*** **United Steelworkers of America, AFL–CIO–CLC and its Local Union Nos. 12130, 12149, 13314.** Case 15–CA–10694

February 28, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On September 12, 1990, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed cross-exceptions, supporting briefs, and answering briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order.[5]

We adopt the judge's conclusion that the subject over which the Respondent bargained to impasse was a change in the scope of the parties' multiplant bargaining unit and, thus, a nonmandatory subject of bargaining. As reflected in the initial paragraph of the 1985–1988 contract, the bargaining unit was represented by United Steelworkers of America, AFL–CIO–CLC, and three of its local unions. In negotiations over a contract to succeed the 1985–1988 contract, the Respondent proposed a master agreement and three local supplemental agreements. Each local supplemental agreement, however, was to be between only the Respondent, the International union, and one local Union. The Respondent insisted to impasse on these supplemental agreements.[6]

The Respondent argues that its proposed local supplemental agreements were not substantively different from appendices attached to the prior multiplant contract that separately addressed certain terms and conditions of employment at each individual plant. We agree with the judge's rejection of this argument. We also note, however, that even if the parties previously had permitted certain issues to be resolved by bargaining solely between the Respondent and a local union, no party was required to continue bargaining on this basis. As the Board stated in *Boston Edison Co*., above at 553, ''although parties may voluntarily consent to bargaining . . . on a basis other than the established appropriate unit, neither party may be forced to continue such negotiations. . . . A party may not be forced to bargain on other than a unit basis.'' Although the Board made this statement in a case in which an employer sought to compel unions representing single-plant units to bargain jointly about pension issues on a multiplant basis, the same principle is applicable here, where the Respondent sought to require components of a multiplant unit to bargain about certain issues on an individual-plant basis. Accordingly, we agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by insisting to impasse on a nonmandatory subject of bargaining.

AMENDED REMEDY

The last sentence of the first paragraph of the remedy section of the judge's decision shall be replaced with the following:

> The Respondent shall be ordered to make whole its employees for any loss of pay or other employment benefits that they may have suffered commencing on May 30, 1988, by reason of the Respondent's unilateral changes of its employees' terms and conditions of employment, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The following sentence shall be inserted immediately before the last sentence of the second paragraph of the remedy section of the judge's decision:

> Backpay shall be as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, above.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and

[1] The spelling of the Respondent's name appears as corrected.

[2] The General Counsel's motion, in which the Charging Party joined, to strike the Respondent's brief in support of its exceptions is denied.

[3] The word ''unit'' was inadvertently omitted after the word ''multi-location'' in the sentence preceding the citation to *Boston Edison Co*., 290 NLRB 549 (1988), in the ''Analysis'' section of the judge's decision. We correct this omission.

[4] We find it unnecessary to pass on the General Counsel's and Charging Party's cross-exceptions contending that the Respondent's failure to reinstate strikers was unlawful even if the strike was an economic strike. We also find it unnecessary to pass on the Charging Party's alternative argument in support of the 8(a)(5) violation found by the judge.

[5] We shall correct the first paragraph of the judge's recommended remedy to require that interest be computed as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), rather than *Florida Steel Corp*., 231 NLRB 651 (1977). We also shall add to the second paragraph of the recommended remedy that backpay for the strikers be computed as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, above.

[6] The Respondent correctly contends that a determination of whether a party to contract negotiations has insisted to impasse on a nonmandatory subject must be based on the party's contract proposal pending at the time impasse occurs rather than proposals that have been withdrawn prior to impasse. We find, however, that the judge adequately considered the Respondent's proposal at the time of impasse, and we view his discussion of the Respondent's prior proposals merely as providing relevant background and context to its later proposal on which it insisted to impasse.

orders that the Respondent, Reichhold Chemicals, Inc., Bay Minette, Alabama, Pensacola, Florida, and Oakdale, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Patrick F. Dunham, Esq., for the General Counsel.
Richard Kobdish, Esq., Allan King, Esq., and *Terry Bauman, Esq.*, for the Respondent.
Joe Whatley Jr., Esq., and *Frederick Kuykendall III, Esq.*, for the Charging Party.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD JR., Administrative Law Judge. I heard the case in April 1989 in New Orleans, Louisiana. The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by demanding as a condition of consummating a collective-bargaining agreement that the Union agree to provisions that altered the bargaining unit and, in furtherance of its demand, bargained to impasse and implemented its final offer, which, inter alia, altered pension plans covering employees. It is also alleged that Respondent unlawfully required returning unfair labor practice strikers to sign statements, and refused to reinstate them to employment despite their unconditional offer to return to work on July 19, 1988,[1] in violation of Section 8(a)(3) of the Act.

Based on the entire record, including the parties' briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

As the complaint alleges, Respondent admits, and I find, Respondent is a Delaware corporation engaged in production and distribution of industrial chemicals at its facilities in Pensacola, Florida; Oakdale, Louisiana; and Bay Minette, Alabama, from which it annually ships products valued in excess of $50,000 directly to customers located outside those States, and is an employer engaged in commerce within the meaning of the Act. The Union is admittedly a labor organization.

II. APPROPRIATE BARGAINING UNIT

I find, as agreed by the parties and as this record amply supports, that the long-established unit of the following employees of Respondent constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Respondent at the Pensacola, Florida; Oakdale, Louisiana; and Bay Minette Alabama facilities, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Union, since about 1971, admittedly has been and is the designated exclusive collective-bargaining representative of employees in the above unit and has been recognized as such by Respondent since that date, as evidenced by successive bargaining agreements, the most recent being effective from May 20, 1985, to May 20, 1988.

III. THE UNFAIR LABOR PRACTICES

A. *The Parties Bargaining Sessions*

At the first bargaining session April 19, 1988, the Union gave the Company its proposals and went through them. (R. Exh. 3.) Respondent's representative Jim Harris presented his side's contract changes (R. Exh. 4), reading from a printed copy. He read:

> It is the desire of the Company to negotiate an elimination of the current multi-plant bargaining under the master agreement. The Company purposes the creation of (4) separate bargaining agreements with four (4) separate expiration dates. . . .
>
> There are a number of factors that support our proposal *to split this bargaining relationship into separate units*. [Harris listed and described 33 such factors, reading from the proposal, then read as follows]:
>
> Further, the Company would propose certain separate and distinct job classifications, seniority provisions, job qualifications, sub-contracting language, overtime procedures, grievance procedures, hours of work, temporary assignments, and other such issues prevalent [sic] to the particular plants (including wages, benefits and working conditions).

The Respondent's proposal described itself in a concluding paragraph as ''this proposal to split this Master Agreement into four (4) separate collective bargaining agreements with four (4) separate expiration dates.''

Union Negotiator Gonzalez testified that Respondent's proposal was reported to the three local unions' membership on April 27, and that the membership unanimously authorized the Union's bargaining committee to determine strike action so as to convey a loud message of objection to the proposal.

At the parties' next meeting on May 10, they discussed the Union's April 19 proposals, some of which were rejected by Harris, while others were reserved for later attention. Gonzalez informed Harris with respect to the Company's proposal ''that the Union totally rejected the splitting up of the master agreement into four agreements and that it was presented as a package and that we rejected it as a package.''

During the fourth session, on May 11, the parties went through the Union's proposals on language changes, the inclusion of the Oakdale lab, and other subjects such as management rights, notice before plant closure, quitting time, length of shifts, plant practices, seniority, meal allowances, subcontracting, bulletin boards, and overtime.

During an afternoon recess Harris told Gonzalez that Respondent knew it could not legally insist on its proposal to separate the bargaining unit and would be coming back with another proposal in such regard.

That afternoon after Respondent discussed union proposals further, Respondent put the new proposal on the table (R. Exhs. 7a–d), its second proposal on noneconomic terms, and described by Harris as a proposal consisting of ''a master

[1] Counsel for General Counsel withdrew striker Crenshaw from the complaint allegations at the hearing, leaving 24 unreinstated employees.

and supplemental agreements.'' Harris told the union negotiators, referring to the new proposal, ''they are much more specific, fairly lengthy and it is making the major movement for our position *on a different and total split of the four (4) units which we would like to do*. *We have wanted to do it for some time*. This proposal moves to a Master Agreement concept *with a different twist*; four (4) supplemental agreements. With this proposal, *this concept is no longer permissive*.'' (Respondent notes of meeting, R. Exh. 6, last page, emphasis supplied.)

The Respondent's proposal called for sweeping changes in the parties' time-proven successful bargaining format. The separate plant ''Local Supplemental Agreement[s]'' contained new provisions to vary the expiration date of the contracts from plant to plant, so that there would be four separate expiration dates as described in Harris' testimony.

Many subject matters forming the core of the parties' established master agreement were entirely taken out and moved to separate supplemental agreements, such as wages and rates of pay which included minimum and basic rates of pay, shift differentials, and new job classification pay, holiday designation and pay, vacations, pensions, funeral leave benefits, and jury duty pay.

Many equally long-established contract provisions defining the parties' bargaining in the multilocation unit, although not entirely removed, are significantly altered by Respondent's proposal so as to more strongly demarcate each of the four plants from the reach of the historical multiplant bargaining in a single unit.

Thus, there are four separate agreements, whereas before there was a single contract covering the plants and containing side letters or appendices on a more limited number of terms as *agreed upon by the parties*. The new proposal changes the heading on the old contract to a ''Master Agreement,'' while the new separate plant agreements contain the heading ''Local Supplemental Agreement[s],'' specifically identify only the plant covered therein and state the agreement is between Respondent and United Steelworkers of America and identifies *only the local union at that plant* as the party (with the Steelworkers International) with whom it is separately under contract. (R. Exhs. 7–B, C, and D.)

The proposal changes the wording in the preamble to state, ''Each of the four (4) plants covered by this Master Agreement shall have a separate local supplemental agreement which will be negotiated between the Company and the Union (on behalf of each local union participating in this Master Agreement).''

The proposal changes the language in article I, ''Recognition and union security from the former contract language, which merely identified the geographical scope of the Union's recognition by reference to the cities where Respondent's operations were located, to the words, the Union shall be the sole and exclusive bargaining agency for all production and maintenance employees *at the two plants located* in Pensacola, Florida; as well as the *ones located* in Bay Minette, Alabama; and Oakdale, Louisiana, etc. (emphasis added to represent the new wording). The term *Master* before the word agreement is inserted at some 15 locations throughout the changed contract language so as to underline its newly invested distinctiveness from the local supplemental agreements.

Dues deductions in connection with union-security provisions and PAC employee contributions for the first time are identified as being deducted from the pay of each employee covered by *the four (4) local supplemental agreements*; further, such PAC contributions are to be those as set out in *the local supplemental agreements*. This particular emphasis on referral to the local supplemental agreements is noted inasmuch as the parties simply referred in the past agreement to a single appendix k, which is a standard form for all employees to execute for PAC contributions which was appended to their agreement covering all employees in the unit. As shall be noted further below, Respondent asserted the need for greater flexibility in operations as the motive behind its move to separate plant bargaining units yet no such purpose seems to be served by its insistence on such a language change.

Revealing its drive towards a separation in the overall unit further is Respondent's proposal to restrict strikes and lockouts to the separate plants. The proposal changes the former agreement language which provided an agreement by the Company to refrain from any lockout ''During the term of this Agreement'' and a no-strike agreement by the Steelworkers and 3 local unions ''jointly and severally,'' also during the same contract term, to read as follows, the underlined portions being the proposals for new language:

> 1.4 (a) During the term of *each local supplemental agreement* the Company agrees that there shall be no lockout *at the plant covered by such local supplemental agreement*. *After expiration of a local supplemental agreement a lockout can occur only with respect to the plant covered by that expired local supplemental agreement*. Likewise, the United Steelworkers of America, AFL–CIO–CLC, and Local Unions No. 12130, No. 12149, and No. 13314 jointly and severally agree that *during the term of each local supplemental agreement* no strike (sympathetic or otherwise), stoppage or slow down of work for any reason will be called, authorized, recognized, incited, or supported in any manner by them *or any of them at any plant covered by such local supplemental agreement. After expiration of a local supplemental agreement a strike can occur only with respect to the plant covered by that expired local supplemental agreement*.
>
> (b) In the event of a strike, stoppage or slowdown of work during the *life of any local supplemental* agreement, the Staff Representatives of the United Steelworkers of America, AFL–CIO–CLC, and the President of the Local Union involved, acting officially for their respective organizations, shall within 24 hours of notice from the Company of such occurrence: [action described].

The proposal provided for exclusive company rights to take appropriate management action at ''*any and all of the four Plants*'' under the newly worded management-rights clause, and added a last sentence to the section on seniority, which was generally plantwide anyway under the parties expired agreement which read, ''Each plant seniority list shall apply only to that plant and to no other plant. '' (Attachment to proposal R. Exh. 7a, par. 4.19.)

In sum, the May 11 proposal effectively drained the parties' established multilocation unit bargaining of some 20 terms and conditions of employment redistributing them for bargaining in individual plant units, covered by separate agreements containing different expiration dates. Given its lengthy and detailed nature, the parties adjourned so the Union could prepare a response.

On May 16, the Union responded to Respondent's proposals on bulletin boards, vacancies, managements rights, overtime, and subcontracting, without much company reaction, there being, in my impression of the parties' bargaining notes, a certain unexpressed greater interest on Respondent's part in hearing the Union's reaction to its far-reaching proposals of the day before.

Gonzalez, in such response for the Union, offered inter alia to *add* a third paragraph to the parties' existing collective-bargaining agreement at *article XIII, Complete Agreement*. (R. Exh. 1.) The new paragraph would provide, as described in Gonzalez' notes, ''all letters of understanding and agreements on local issues pertaining to individual plants [sic] be placed in a supplemental agreement booklet for each plant location and made a part of this agreement by reference.'' (R. Exh. 45, last page of Gonzalez notes May 16, 1988.)

The Union otherwise rejected Respondent's second proposal as ''the effect of its proposal would split the Master Agreement,'' Gonzalez again referring to his express understanding—without denial by Harris—that Respondent's proposal was being read as a package and therefore was rejected in its entirety. (Id. at pp. 1 and 3.) Gonzalez told Harris the Company was trying to do through the supplements what it initially tried to do by breaking the agreement into four separate contracts.

Notes of the session do not show any company response specifically addressed to the Union's offer.

The parties met again the next day, May 17. At the outset in their meeting, Harris warned the Union that the Respondent intended to make serious contract changes and was ''deadly serious'' about its proposals so as to achieve greater profitability at each plant, cautioning further that the Union should make no mistake about Respondent's resolve. Harris then proposed that there be a common expiration date for each plant agreement and the master, the earlier proposal otherwise remaining unchanged in any major respects. This was the third effort by Respondent to press forward its separate bargaining units plan. Gonzalez repeated essentially the Union's earlier counteroffer to consider agreement as in the past on side agreements reflecting practices at specific locations identified as being part of the parties' existing agreement by reference. (R. Exh. 10, last page.) Again not communicating any reaction to the Union's willingness to address by voluntary agreement, as was done in the past, the subject of side agreements pertaining to specific needs at a given plant, Harris said Respondent was considering moving certain provisions of the, as Respondent called them, ''local supplemental agreements into the Master.'' (R. Exh. 10, last page.)

On May 18 Respondent presented an economic proposal and announced it was moving five subjects from the local supplemental agreements back into its proposed master agreement; jury duty, funeral leave, insurance pensions, and vacations. The Pensacola plant would be included in one supplemental agreement with the Newport Plant. Respondent Representative Keith Hall, director of human resources, described the different schedules, wage rates, and classification systems proposed in the separate plant supplemental agreements under the May 18 proposal (R. Exhs. 12–13), the meeting thereafter ending at 10:40 a.m., without further discussion.

The Union replied to Respondent's offer the next day, May 19, Representative Gonzalez, offered a counterproposal ''taking into account all the work done thus far.'' (R. Exh. 13, p. 1.) The Union presented a 15-point counterproposal touching on economic and noneconomic subjects, accepting company proposals on extended care coverage and other health insurance related topics, and proposing uncapping of COLA; and changes in pension, meal allowances, and shift differential pay. Union Representative Gonzalez repeated the Union's position that it was willing to continue *freely* considering deviations from contract language for application to individual locations in the form of side agreements, such as, the record shows, the parties had done with respect to overtime assignment at one location or different use of a holiday. Gonzalez noted, however, that such matters should ''be limited to side agreements at each location only and all other articles/rules referred to by the Company in the supplemental agreement be [sic] written in the agreement and in its present form.'' (Referring to the parties' established multilocation agreement.) Quickly on the heels of Gonzalez describing the union proposal, Harris referred to ''time [is] running out'' and that after adjournment the Company would present a ''final offer.'' Gonzalez said, ''When you tell us it is final, we will accept it as final.'' That afternoon Respondent presented, as Gonzalez recalls, its ''absolute, final last proposal.'' It proposed changes in pension, changes in the Pensacola plant wage scale, that there would be recalculations in the wage scale at the Bay Minette plant, as well as separate job classification restructuring and phaseouts, no bumping rights between the two Pensacola plants in the purposed two-plant unit there, and no hospital benefit changes. (R. Exh. 13.)

Gonzalez testified that at this juncture in negotiations, even though the Union was making counterproposals, the Union's primary, even total, efforts were directed at ''trying to get the Company to get off of these supplements.'' After hearing Respondent's nearly entirely economic last offer which did not even address the Union's repeated objection to breaking up negotiations into plant supplemental agreements, the Union recessed and the local union presidents on the bargaining committee, authorized by their local unions to do so earlier, on April 27, after Respondent's proposal had been reported to the local union membership, voted to go on strike. Gonzalez testified that during the recess he gave the committee his view that Respondent's unwithdrawn demands would weaken the Union's future bargaining position ''how we were getting away from one unit, how the Company was moving toward separate contracts through the supplements.'' The union presidents, Gonzalez recalled, told the committee they were voting to reject the Company's last offer and go on strike because they ''could not accept the Company splitting up the bargaining unit.'' The local union presidents corroborate Gonzalez' testimony. The strike began the next day, May 20.

Respondent operated its business with nonbargaining unit personnel after the strike began, and on May 30 Respondent implemented the terms and conditions of its last and final offer.

By letter dated June 30, 1988, Harris told Gonzalez that since the ''impasse'' in the parties' negotiations began after their failed efforts on May 19, Respondent had communicated its position to employees, and offered to have a meeting ''to explain [its offer] or to address specific concerns of the Union.'' (R. Exh. 23.) Neither in this letter, nor in numerous printed messages to its employees does Respondent address its own intransigence on the company proposal for a master and separate plant contracts. (R. Exhs. 16–22.)

Pursuant to the letter, the parties met in Pittsburgh on July 6. Harris offered to freeze the contract language on economics and reinstate a withdrawn signing bonus, but when Gonzalez asked about the subject of supplements, Harris was adamantly opposed to moving from the earlier position telling him ''that's as far as they're going . . . that it was absolutely the final offer,'' and the meeting ended. On July 14, Gonzalez informed the union bargaining committee what had transpired, and described the Harris offer. The committee members rejected it as the company offer still was separating the unit. Gonzalez called Harris, told him the offer was rejected, and asked for another meeting to discuss a union counterproposal, but Harris told him the Company had given its last offer. Gonzalez nevertheless sent Harris a counterproposal on July 12 substantially addressing economics but stating that the ''supplemental proposals'' were unacceptable. (G.C. Exh. 7.) Harris wrote back on July 14, and ignoring the entire matter of the Union's detailed proposal on economics in his letter, as well as the major union concern about supplemental plant agreements' effect on the established bargaining unit, told Gonzalez once again ''The Company has given you its last, best and final offer'' (G.C. Exh. 8) and warning Gonzalez that Respondent would soon begin hiring replacements for striking employees. The unwarranted blame-ridden tone directed at the Union for the impasse in negotiations in the Harris July 14 letter, as well as unfounded factual assertions accusing the Union of ''stonewalling'' in those negotiations manifest a remarkable mischaracterization and, in my view fortify the belief that Respondent was trying to shrewdly camouflage the fact that it was its own conduct, not the Union's which led to stalemate. Gonzalez replied evenhandedly and reasonably to the letter, clearly rebutting its unsupported assertions on July 18, and putting the blame where he believed it belonged (G.C. Exh. 9), and reminding Harris, with respect to the Respondent's unacceptable proposals that, ''the only [alleged] initiative you have taken is to say this is our proposal on a take it or leave it basis.'' (Id. at p. 1.) At the same time Gonzalez again offered (again to no avail) to meet with the Company to discuss the issues.

Respondent notified employees at its plant that it intended to hire permanent replacements and setting different deadlines at each plant for employees to reclaim their jobs. Employees at Oakdale and Pensacola, according to testimony by Respondent's director of human resources, Keith Hall, returned to their employment before the deadlines there. Bay Minette employees, whose deadline was July 19, were attempting to return around 11 a.m. that day when John Ellis, production superintendent and an agent of Respondent, told them they would have to sign a form bearing the terms, inter alia, ''I _____(name)_____ do hereby make unconditional *application* to return to work . . .'' emphasis added, before they would be allowed to sign up—as it turned out—for later consideration for possible employment given that Respondent had hired numerous permanent replacements and was considering them, the record clearly shows, as returning economic strikers.

Analysis

The Board has uniformly held that the subject of changing the bargaining unit, whether certified by the Board or the result, as here, of the parties' established practice and agreement following recognition, is a permissive, rather than mandatory subject of bargaining, so that neither party to collective bargaining may insist on altering the established unit to impasse, such conduct thereby violating the duty to bargain defined by Section 8(a)(5) of the Act. *Idaho Statesman*, 281 NLRB 272 (1986); *Boise Cascade Corp*., 283 NLRB 462, 467–468 (1987), enfd. 860 F.2d 471 (D.C. Cir. 1988); *Howard Electrical & Mechanical*, 293 NLRB 472, 475 (1989); and *Newport News Shipbuilding & Drydock Co*., 236 NLRB 1637, 1643 (1978).

The contract-covered employees have always been represented in a recognized single-multilocation bargaining unit over a span of 38 years, of that there is no question. Compare *Louisiana Dock Co*., 293 NLRB 233 (1989), in which Administrative Law Judge Richard J. Linton found the employer there violated Section 8(a)(5) of the Act by insisting to impasse that the appropriate unit was not a multilocation unit and the Board reversed on the ground that there was no single-multilocation recognized unit. During this long history of the recognized multilocation unit, found above to be the appropriate unit on the basis of the record as well as the parties' agreement, a few scattered instances occurred when the parties consented to side agreements covering a limited subject matter at an individual plant, and the bare printed subject matter thereof was appended to the parties' collective-bargaining agreement, which always remained throughout the parties' long history of collective bargaining the only repository of subject matter negotiated for all employees in the multilocation unit. Contrary to Respondent's contention, the limited variations of terms contained in the appended matter did not work to create a basis for duplicate bargaining units to arise at the individual plants affected by the side understandings, those being the result of purely consensual bargaining which did not deprive the Union from later withdrawing such consent, or limiting its agreement on the number or type of subjects it would bargain about on an individual plant basis. In short, just as an employer may not force employees involved in separate bargaining units *into* the shared representation inherent in multiplant unit bargaining simply because of some past history of bargaining about a term of employment (a pension plan) in the multiplant unit made possible by the unions past consent, as described in the below-cited case, neither can Respondent force its employees in the established multilocation here to give up their long-settled rights to shared representation in the multilocation unit and accept in its place Respondent's demanded separate plant unit bargaining. *Boston Edison Co.*, 290 NLRB 549, 553 (1988). The Board there stated:

> Although it is well settled that the parties may voluntarily agree to bargain jointly on an other-than-unit basis for certain subject matters and to bargain on a unit basis for other matters, that agreement does not result in two separate units, a broader unit for some purposes and a narrower unit for others. Only one unit covering the same employees may exist at any given time, even if the parties agree to bargain on certain matters on a different basis.

Respondent's avowed intention to split the unit into pieces on April 19 was highly disconcerting to the Union, which promptly secured strike authorization so as to underscore with firmness its rejection to splitting the unit, which it voiced at the very next bargaining session. As detailed above, Respondent, as a stratagem to achieve the same goal by way of as Harris, described it a ''new twist'' and indirect means, disclaimed any further open intention of splitting the unit, only to propose a so-called ''Master Agreement with 4 supplemental agreements'' (the added plant unit to represent the proposed inclusion of a second Pensacola plant) which would displace the established single-multilocation bargaining framework with substantially divided unit bargaining over a drastically increased number of topics drained from the multilocation unit and reserved for separate plant unit bargaining to be memorialized in separate plant contracts with different termination dates. While Respondent later reduced somewhat the *number* of topics for separate plant bargaining to be outside the reach of multilocation unit bargaining when confronted with continuing union objections, as well as withdrawing separate termination dates, it left a substantial number of core employment terms and language changes forcing the division of the established unit into separate plant units, some 12 in all, described above in its final offer, which in any event continued to drastically alter the scope of the multilocation bargaining unit by way of requiring separate plant negotiations on a wide range of employment terms to be contained in separate plant contracts, expressly identifying the Respondent, the Union, and only the local union at the plant involved as parties to the contracts there described above in accounts of the parties' failed negotiations. The suggestion by Respondent that somehow its final proposal was merely a continuum in past patterns of bargaining between the parties, therefore lacks merit.

A collective-bargaining unit is not defined solely by its bare geographic boundaries so that whatever demands a party makes for bargaining changes like those involved here are valid so long as made within and impacting within those boundaries. Collective-bargaining units are rather more dynamic in nature and are also based on a distinct community of employment interests among the employees in the unit and derive value and great importance in that the established and appropriate unit tends to foster a stability beneficial to collective bargaining. A drastic change like Respondent demanded here from bargaining in a single-multilocation unit to a ''master with 4 supplements'' breaks apart the employees' distinct community of employment interests established over 38 years and severely undermines the integrity of such unit thereby tending to destabilize collective bargaining.

Respondent's proposal disrupts the established alignment and inner positioning of forces from which each party has brought its economic power to bear in stable collective bargaining for 38 years and, as such, disintegrates the unit from within. Such a proposal clearly works an alteration in the scope and content of the established bargaining unit within the meaning of the cited Board law.

Respondent's proposal, which it insisted on in main respects throughout the entire course of the parties' failed negotiations overshadowed and displaced any opportunity or reasonable prospects for the parties to progress in bargaining over other matters, and I find, as abundantly clear from the record of their negotiations and as uncontroverted that Respondent's insistence on changing the bargaining unit deadlocked the parties in impass on May 19. *Facet Enterprises*, 290 NLRB 152 (1988), enfd. in part and remanded in part 907 F.2d 963 (10th Cir. 1990); *Taft Broadcasting Co*., 163 NLRB 475 (1967); and *Sacramento Union*, 291 NLRB 552 (1988), where the Board noted that impasse on a single critical issue may create a deadlock in the entire bargaining process. *American Commercial Lines*, 291 NLRB 1066 (1988). By such insistence Respondent bargained to impasse over a nonmandatory subject, thereby violating Section 8(a)(5) of the Act under the earlier cited case law. Respondent's conduct also plainly violated that section in the Act on the alternative theory alleged in the complaint by conditioning the consummation of a collective-bargaining agreement on the Union's acceptance of Respondent's proposal to change the bargaining unit, a nonmandatory subject of bargaining.

B. *Unilateral Changes*

It is further found that Respondent's implementation of all the terms of its final May 19 offer, on May 30 as the parties stipulated was done, violated Respondent's bargaining duties under the Act further insofar as the unit changing provisions, some economic and some noneconomic in nature, are concerned because the Union was not required to bargain about such nonmandatory subjects and the implementation was done without the consent of the Union. *Howard Electrical & Mechanical*, supra at 475. Respondent cannot rely as justification for its unilateral implementation of any remaining economic proposals on the parties' impasse in negotiations because, as described above, the impasse which paralyzed bargaining on all subjects was an unlawful impasse, caused by Respondent's demand for agreement on a nonmandatory subject. *Park Inn Home for Adults*, 293 NLRB 1082 fn. 9 (1989).

C. *The Failure to Reinstate Strikers*

As is documented and undenied, the employees engaged in a strike which began on May 20 and was caused, at least in part if not entirely, by Respondent's illegal insistence to impasse on changing the unit. The evidence clearly establishes that they were unfair labor practice strikers. *Chesapeake Plywood*, 294 NLRB 201 (1989); *Northern Wire Corp*., 291 NLRB 727 (1988); and *Tufts Bros., Inc*., 235 NLRB 808, 810 (1978). This being so, the Bay Minette employees were entitled to immediate reinstatement on their unconditional offers to return to work on July 19; instead Respondent treated them as economic strikers who had been permanently replaced, and further discriminated against them by requiring that they sign employment application papers before being eligible for consideration for reinstatement at a future time. By each such acts, including its failure to displace, if nec-

essary, any employees hired into their jobs regardless of whether those employees were hired as permanent replacements so as to effectuate the reinstatement of the strikers, Respondent violated Section 8(a)(1) and (3) of the Act. *Teledyne Still-Man*, 298 NLRB 982 (1990); *Atlantic Creosoting Co*., 242 NLRB 192 (1979); and *Foote & Davies*, 278 NLRB 72, 77 (1986).

D. *The Recall of Strikers*

Late in the hearing, counsel for General Counsel amended the complaint to allege that among other unilateral changes implemented by Respondent unlawfully it changed the preexisting contract provisions regarding recall of employees to conform to the recall provisions contained in its last offer of a supplement at the Bay Minette plant, and used the unilaterally implemented system to govern recall of strikers there. Respondent admits to using the new system but calls it seniority based, and the record is empty as to which employees, if any were affected or to what extent, if any, there occurred detriment to any employee. Since I have found that Respondent's last offer, which includes the recall provisions described here, was unlawfully implemented, the recall rights of the strikers, the specifics of which are better left to the compliance stage of this proceeding, will be protected by the remedy in this case, and there is no need for a duplicate finding of violation.

THE REMEDY

Because Respondent unlawfully implemented new terms and conditions of employment, it is necessary under Board law to order restoration of the contractual status quo ante in the respects, noted above, to the extent feasible, and without imposing an unwarranted burden on Respondent. *F. M. L. Supply*, 258 NLRB 604 (1981); *S. Freedman Electric, Inc*., 256 NLRB 43 (1981); and *Hood Industries*, 248 NLRB 597 fn. 3 (1980). Included in such remedy, I shall recommend that Respondent make whole its employees for any loss of pay or other employment benefits which they may have suffered commencing on May 30, 1988, by reason of Respondent's unilateral changes of its employees' terms and conditions of employment, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *Florida Steel Corp*., 231 NLRB 651 (1977); *E G & G Florida, Inc*., 279 NLRB 444 (1986); and see *Storer Communications*, 294 NLRB 1056 (1989).

Having violated Section 8(a)(1) and (3) of the Act, when on July 19, 1988, and thereafter, Respondent unlawfully refused to reinstate unfair labor practice strikers on their unconditional offer to return to work, offering only to reemploy them when positions became available by normal attrition among poststrike permanent replacements and even then only pursuant to terms and conditions of employment unlawfully imposed, I shall recommend Respondent be ordered to offer immediate reinstatement to the strikers identified in the complaint to their former or equivalent positions, discharging any replacements hired on or after May 20, 1988, under terms and conditions of employment and the recall provisions of the expired contract, and to make them whole for wages and other benefits, measured under status quo ante conditions, lost by virtue of its unlawful conduct. Backpay shall cease on offering such employees reinstatement to their old or substantially equivalent jobs. *PRC Recording Co*., 280 NLRB 615 (1986).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Reichhold Chemicals, Inc., Bay Minette, Alabama, Pensacola, Florida, and Oakdale, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Union by insisting to impasse in negotiations on the adoption of its proposal to alter the scope of the collective-bargaining unit; which is:

> All production and maintenance employees employed by Respondent at the Pensacola, Florida; Oakdale, Louisiana; and Bay Minette Alabama facilities, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Refusing to bargain in good faith with the Union by insisting as a condition to consummating a new collective-bargaining agreement on adoption of its proposal to alter the scope of the collective-bargaining unit.

(c) Refusing to bargain in good faith with the Union by unilaterally changing existing terms and conditions of employment established under its former bargaining agreement with the Union.

(d) Refusing to immediately reinstate unfair labor practice strikers to their former or substantially equivalent positions of employment discharging, if necessary, any replacements.

(e) Requiring strikers to execute applications to return to work as a condition to being considered for reinstatement.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Offer to the unfair labor practice strikers immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary persons hired on or after May 20, 1988, and make them whole for any loss of earnings they may have suffered as a result of Respondent's unlawful refusal to reinstate them, in the manner described in the remedy section of this decision.

(b) On request, rescind the above unilateral changes until such time as the Respondent negotiates in good faith with the Union to agreement or valid impasse.

(c) On request, restore the employment benefits found to have been unilaterally changed and make whole the employees in the above unit for all losses they may have suffered as a result of Respondent's changes, with interest thereon, to

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

be computed as described in the remedy section of this decision.

(d) On request, recognize and bargain in good faith with the Union as the exclusive representative of all employees in the aforesaid appropriate unit, and, if an understanding is reached, embody such understanding in a written, signed agreement.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Pensacola, Florida; Oakdale, Louisiana; and Bay Minette, Alabama plants copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT do anything to interfere with these rights.

WE WILL NOT refuse to bargain in good faith with United Steelworkers of America, AFL–CIO–CLC by insisting to impasse in negotiations on the adoption of our proposal to alter the scope of the collective-bargaining unit, which is:

> All production and maintenance employees employed by Respondent at the Pensacola, Florida; Oakdale, Louisiana; and Bay Minette Alabama facilities, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT refuse to bargain in good faith with the Union by insisting as a condition to consummating a new collective-bargaining agreement on adoption of our proposal to alter the scope of the collective-bargaining agreement.

WE WILL NOT unilaterally change existing terms and conditions without bargaining in good faith with the Union beforehand.

WE WILL NOT refuse reinstatement to former Bay Minette plant unfair labor practice strikers, discharging, if necessary, any replacements.

WE WILL NOT require returning strikers to sign applications to return to work as a condition to being considered for reinstatement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as exclusive representative of our employees in the above-described unit and, if an understanding is reached, embody such in a signed agreement.

WE WILL restore and place in effect retroactive to May 30, 1988, all conditions of employment which we were found to have unlawfully changed; and WE WILL make whole employees for any losses they may have incurred as a result of our unlawful action in changing such employment conditions. The conditions will remain unchanged until such time as the parties execute a new agreement, or bargain to good-faith impasse. WE WILL offer the unfair labor practice strikers immediate and unconditional reinstatement to their former or substantially equivalent positions of employment, as described above, without prejudice to their seniority or other rights and privileges, and WE WILL make each of them whole for any loss of wages suffered by reason of our unlawful conduct against them with interest.

REICHHOLD CHEMICAL, INC.